

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Campos	Team: Squad #16	CCRB Case #: 201706399	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/18/2016 11:00 PM	Location of Incident: In front of 580 Albany Avenue; 71st Precinct stationhouse	Precinct: 71	18 Mo. SOL 4/18/2018	EO SOL 4/18/2018	
Date/Time CV Reported Fri, 08/04/2017 12:30 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 08/04/2017 12:30 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Frank Beers	17641	945498	071 PCT
2. LT William Diab	00000	940125	071 PCT
3. POM Vu Nguyen	16150	949393	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT William Diab	Abuse: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Frank Beers	Abuse: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Vu Nguyen	Abuse: In front of 580 Albany Avenue in Brooklyn, Police Officer Vu Nguyen stopped the vehicle in which § 87(2)(b) was an occupant.	
D.POM Frank Beers	Abuse: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers frisked § 87(2)(b)	
E.LT William Diab	Abuse: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab supervised the frisk of § 87(2)(b)	
F.POM Frank Beers	Abuse: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers searched § 87(2)(b)	
G.LT William Diab	Abuse: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab supervised the search of § 87(2)(b)	
H.POM Frank Beers	Abuse: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Vu Nguyen	Discourtesy: En route to the 71st Precinct stationhouse, Police Officer Vu Nguyen spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Vu Nguyen	Force: En route to the 71st Precinct stationhouse, Police Officer Vu Nguyen used physical force against § 87(2)(b)	
K.POM Vu Nguyen	Abuse: At the 71st Precinct stationhouse, Police Officer Vu Nguyen searched § 87(2)(b) cellphone.	
L.POM Vu Nguyen	Abuse: At the 71st Precinct stationhouse, Police Officer Vu Nguyen damaged § 87(2)(b) property.	
M.POM Vu Nguyen	Discourtesy: At the 71st Precinct stationhouse, Police Officer Vu Nguyen spoke discourteously to § 87(2)(b)	

### Case Summary

On August 4, 2017, § 87(2)(b) filed this complaint on behalf of himself via the CCRB website.

At approximately 11:00 PM on October 18, 2016, § 87(2)(b) was driving when he was stopped by Police Officer Frank Beers, Police Officer Vu Nguyen, and Lieutenant William Diab of the 71<sup>st</sup> Precinct (**Allegation A, B, and C: Abuse of Authority**, § 87(2)(g) in front of 580 Albany Avenue in Brooklyn. § 87(2)(b) was asked out of his vehicle and PO Beers frisked and searched him while Lt. Diab supervised (**Allegation D, E, F, and G: Abuse of Authority**, § 87(2)(g)). PO Beers then searched § 87(2)(b) vehicle (**Allegation H: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was arrested for weapons possession and taken to the 71<sup>st</sup> Precinct stationhouse by Lt. Diab and PO Nguyen. En route to the stationhouse, PO Nguyen looked at § 87(2)(b) and stated to Lt. Diab, “Hey, pull over. I don’t trust this motherfucker behind me” (**Allegation I: Discourtesy**, § 87(2)(g)). The vehicle was stopped and PO Nguyen sat next to § 87(2)(b). PO Nguyen placed his hand around the back of § 87(2)(b) neck and held it face down (**Allegation J: Force**, § 87(2)(g)). PO Nguyen stated “Don’t fucking try anything,” and “You’re a smart guy, so this is the time you should shut the fuck up” (**Allegation I: Discourtesy**, § 87(2)(g)).

When they arrived at the stationhouse, § 87(2)(b) was placed in a holding cell. PO Nguyen brought § 87(2)(b) cellular phone to the waiting cell and told § 87(2)(b) to unlock the cellular phone; § 87(2)(b) unlocked the cellular and PO Nguyen walked away with the phone while engaging the screen. PO Nguyen proceeded to reset § 87(2)(b) phone, deleting all of its contents (**Allegation K and Allegation L: Abuse of Authority**, § 87(2)(g)). PO Nguyen returned to the waiting cell and § 87(2)(b) told him that the weapons he was arrested for belonged to his brother. PO Nguyen asked § 87(2)(b) if he would like to switch places with his brother, and when § 87(2)(b) replied that he would, PO Nguyen stated, “That’s fucked up” (**Allegation M: Discourtesy**, § 87(2)(g)). § 87(2)(b) was held at the stationhouse overnight and released the following morning.

### Findings and Recommendations

**Allegation A—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Police Officer Vu Nguyen stopped the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) testified to the CCRB that at approximately 11:00 PM on October 18, 2016, he was driving the vehicle of his brother, § 87(2)(b) northbound on Albany Avenue in Brooklyn in order to pick up food he had ordered from a restaurant at 580 Albany Avenue. Please note that § 87(2)(b) will be referred to by his full name throughout this report. In order to park in front of the restaurant, § 87(2)(b) made U-turn on Albany Avenue and stopped the vehicle in front of 580 Albany Avenue. At that point, § 87(2)(b) noticed that an unmarked vehicle with PO Beers, PO Nguyen, and Lt. Diab was behind his vehicle with its turret lights on. § 87(2)(b) stopped his vehicle for the officers and remained in the vehicle (Board Review 01).

PO Beers and Lt. Diab testified that they observed § 87(2)(b) make a U-turn on Albany Avenue, and that his vehicle was stopped because the U-turn was illegal (Board Review 02 and Board Review 03). PO Beers and Lt. Diab stated that the U-turn was illegal because it was conducted in a business district. PO Nguyen stated that the vehicle stop was conducted because § 87(2)(b) crossed two solid yellow lines (Board Review 04).

The New York City Department of Transportation Traffic Rules, Section 4-05 states that operators of motor vehicles may not make U-turns within a business district as defined by Section 105 of New York State Vehicle and Traffic Law (Board Review 05). Section 105 of the NY State VTL defines a business district as, “The territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings, which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway” (Board Review 06).

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)  
§ 87(2)(b), § 87(2)(g)

**Allegation D—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers frisked § 87(2)(b)**

**Allegation E—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab supervised the frisk of § 87(2)(b)**

§ 87(2)(b) testified during his CCRB interview that after the vehicle was stopped, PO Beers approached the driver’s side window and told him to exit the vehicle and he did so. PO Beers asked § 87(2)(b) if he had any drugs or weapons on him and § 87(2)(b) stated that he did not. PO Beers asked § 87(2)(b) if there were any weapons or drugs in the vehicle. § 87(2)(b) stated that there was none, but added that the vehicle belonged to his brother. As PO Beers asked § 87(2)(b) about the contents of his vehicle, he frisked § 87(2)(b) on his wrists, his upper chest and stomach, his jacket pockets, his waistband, and pants pockets. Nothing was recovered as a result of the frisk. § 87(2)(b) was unaware of a knife or any weapons inside his vehicle at that time (Board Review 01).

In a phone interview with § 87(2)(b) § 87(2)(b) he confirmed that he had a knife in his vehicle at the time § 87(2)(b) was stopped. The knife, which he owned for work purposes, was kept in the glove box of his vehicle. § 87(2)(b) § 87(2)(b) added that he had a hatchet in the vehicle’s trunk at the time of the vehicle stop (Board Review 07).

PO Beers testified during his CCRB interview that when he approached the driver’s side window of § 87(2)(b) vehicle in order to speak with him, he noticed that there was knife on the center console. PO Beers did not recognize the knife as a switchblade upon sight. PO Beers asked § 87(2)(b)

§ 87(2)(b) to exit the vehicle in order to determine what kind of knife he had observed. When § 87(2)(b) opened the door to his vehicle in order to exit, PO Beers observed a hatchet sitting blade down between the driver's seat and the back of the vehicle door frame. PO Beers did not say anything to § 87(2)(b) about the weapons, and he directed § 87(2)(b) to stand at the rear of his vehicle. PO Beers did not recall if § 87(2)(b) was frisked at that point. PO Beers recalled that § 87(2)(b) was frisked for weapons, but he could not recall when the frisk took place. § 87(2)(b) was arrested shortly after for weapons possession (Board Review 02).

Property Voucher § 87(2)(b), prepared by PO Beers, showed that a switchblade and a hatchet were vouchered as arrest evidence against § 87(2)(b) (Board Review 08). § 87(2)(b) arrest report, prepared by PO Beers, showed that he was in possession of a hatchet and switchblade knife, but it does not show the location in which the weapons were found (Board Review 15).

Lt. Diab testified to the CCRB that PO Beers informed him about the knife's presence when PO Beers observed it; Lt. Diab did not observe the knife at that point. PO Beers decided to place § 87(2)(b) under arrest for the knife; PO Beers did not consult Lt. Diab about his decision to place § 87(2)(b) under arrest. PO Beers told § 87(2)(b) to exit his vehicle and PO Beers frisked him. Lt. Diab did not recall where on § 87(2)(b) body PO Beers frisked him. While PO Beers frisked § 87(2)(b) they were positioned next to the driver's seat while Lt. Diab was positioned at the back of the vehicle; Lt. Diab did not recall which side of the vehicle he was on (Board Review 03).

PO Nguyen testified at the CCRB that as PO Beers spoke to § 87(2)(b) at the driver's side window, PO Nguyen stood at the passenger's side of the vehicle. PO Beers told PO Nguyen that § 87(2)(b) was going to be asked out of the vehicle, and PO Beers did so. PO Beers told PO Nguyen that he had seen a knife; PO Nguyen had not seen the knife at that point. § 87(2)(b) exited the vehicle; PO Nguyen did not recall if PO Beers frisked § 87(2)(b) at that point. PO Nguyen did not witness any officer frisk or search § 87(2)(b) before he was placed into handcuffs. PO Nguyen did not recall where Lt. Diab was positioned while the vehicle was stopped (Board Review 04).

§ 87(2)(b), § 87(2)(g)  
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§ 87(2)(g)

**Allegation F—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers searched § 87(2)(b)**

**Allegation G—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Lieutenant William Diab supervised the search of § 87(2)(b)**

§ 87(2)(b) testified during his CCRB interview that PO Beers searched him after he frisked him. PO Beers reached into both of his pants pockets, removed the contents of the pockets, and placed them onto his dashboard. PO Beers also reached into § 87(2)(b) jacket pockets, which were empty. No drugs or weapons were recovered from § 87(2)(b) person (Board Review 01).

PO Beers denied searching § 87(2)(b) (Board Review 02). Lt. Diab did not recall if PO Beers searched § 87(2)(b) (Board Review 03). PO Nguyen did not witness any officer search § 87(2)(b) during the incident (Board Review 04).

§ 87(2)(b), § 87(2)(g)

**Allegation H—Abuse of Authority: In front of 580 Albany Avenue in Brooklyn, Police Officer Frank Beers searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) testified at the CCRB that after he was frisked and searched, PO Beers directed him to stand at the rear of his brother's vehicle. As he spoke to Lt. Diab at the rear of the vehicle, PO Beers conducted a search of the vehicle. PO Beers leaned into the driver's side door and lifted the seat cushion to look under it, he slid the passenger seat back to look under it, and he searched in between the seats and the center console (Board Review 01).

PO Beers testified at the CCRB that he asked § 87(2)(b) to exit the vehicle in order to determine what kind of knife he had observed on the center console. As noted above, PO Beers also observed the hatchet when § 87(2)(b) exited his vehicle. PO Beers did not say anything to § 87(2)(b) about the weapons, and he directed § 87(2)(b) to stand at the rear of his vehicle. PO Beers reached into the vehicle and recovered the knife and the hatchet. PO Beers also searched under the driver's seat and between the center console and the seat. PO Beers did not recall if he searched under the passenger's seat. After recovering the knife, PO Beers determined the knife to be a switchblade and he decided to place § 87(2)(b) under arrest for possessing a knife (Board Review 02).

As noted above, Property Voucher # § 87(2)(b) showed that a switchblade and a hatchet were vouchered as arrest evidence against § 87(2)(b) (Board Review 08). Also noted above, § 87(2)(b) arrest report showed that he was in possession of a hatchet and switchblade knife, but it does not show the location in which the weapons were found (Board Review 15)

Lt Diab testified at the CCRB that PO Beers recovered the weapons from the vehicle. Lt. Diab did not know where the weapons were in the vehicle, but he recalled that PO Beers told him that the knife was on the center console. Lt. Diab did not recall where PO Beers searched § 87(2)(b)

§ 87(2)(b) vehicle except to obtain the observed weapons. PO Beers showed the knife to Lt. Diab who determined the knife was a switchblade (Board Review 03).

PO Nguyen testified at the CCRB that PO Beers told him that he had seen a knife in the center console of § 87(2)(b) vehicle; PO Nguyen had not seen the knife. PO Nguyen did not recall anywhere else PO Beers searched the vehicle except to recover the knife (Board Review 04).

In People v. Galak, 81 N.Y. 2d 463, the court held that officers could conduct a warrantless vehicle search if there is probable cause to believe that evidence connected to a contemporaneous arrest will be found as a result of the search (Board Review 10).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation I—Discourtesy: En route to the 71st Precinct stationhouse, Police Officer Vu Nguyen spoke discourteously to § 87(2)(b)**

**Allegation M—Abuse of Authority: At the 71st Precinct stationhouse, Police Officer Vu Nguyen spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified to the CCRB that after he was placed under arrest, he was placed in the officers' vehicle while PO Nguyen was in the passenger's seat and Lt. Diab drove the vehicle. En route to the 71<sup>st</sup> Precinct stationhouse, PO Nguyen stared at § 87(2)(b) until he told Lt. Diab, "Hey, pull over. I don't trust this motherfucker behind me." Lt. Diab stopped the vehicle and pulled over. PO Nguyen entered the backseat with § 87(2)(b) and used discourteous language against him again; § 87(2)(b) could not recall the exact profanity used, but he stated it was something like, "Don't fucking try anything." § 87(2)(b) told PO Nguyen that what he was doing was not right, and PO Nguyen stated, "You're a smart guy, so this is the time you should shut the fuck up."

Later on at the stationhouse, § 87(2)(b) was placed into a waiting cell. PO Nguyen approached the waiting cell to speak with § 87(2)(b) who had earlier told PO Nguyen that the weapons found in the vehicle belonged to his brother, § 87(2)(b). PO Nguyen asked § 87(2)(b) if § 87(2)(b) was going to admit that the retrieved weapons belonged to him and if § 87(2)(b) would rather his brother was the one in the cell for the weapons possession. § 87(2)(b) stated that he would prefer so, and PO Nguyen stated, "Wow, that's fucked up," before leaving § 87(2)(b) in the waiting cell (Board Review 01).

PO Nguyen denied stating “Hey, pull over. I don’t trust this motherfucker behind me,” “Don’t fucking try anything,” and “You’re a smart guy, so this is the time you should shut the fuck up,” to § 87(2)(b) while en route to the 71<sup>st</sup> Precinct stationhouse and denied stating, “Wow, that’s fucked up,” at the 71<sup>st</sup> Precinct stationhouse. PO Nguyen denied using profanity at any point during the incident (Board Review 04).

Both PO Beers and Lt. Diab could not recall if they were in the same vehicle as § 87(2)(b) en route to the 71<sup>st</sup> Precinct stationhouse. Neither PO Beers nor Lt. Diab witnessed or were aware of PO Nguyen stating “Hey, pull over. I don’t trust this motherfucker behind me,” “Don’t fucking try anything,” nor “You’re a smart guy, so this is the time you should shut the fuck up,” to § 87(2)(b) while en route to the 71<sup>st</sup> Precinct stationhouse and neither witnessed nor were aware of PO Nguyen stating, “Wow, that’s fucked up at the 71<sup>st</sup> Precinct stationhouse.

§ 87(2)(b), § 87(2)(g)

**Allegation J—Force: En route to the 71st Precinct stationhouse, Police Officer Vu Nguyen used physical force against § 87(2)(b)**

§ 87(2)(b) testified at the CCRB that when PO Nguyen joined him in the back seat of the officers’ vehicle while en route to the 71<sup>st</sup> Precinct stationhouse, PO Nguyen placed his hand firmly around the back of § 87(2)(b) neck. PO Nguyen held § 87(2)(b) head so that it faced downward. PO Nguyen held the back of § 87(2)(b) head until they reached the 71<sup>st</sup> Precinct stationhouse. PO Nguyen’s hand on § 87(2)(b) neck made him uncomfortable but it did not cause him pain. § 87(2)(b) was not injured and his breathing was not restricted as a result of the force (Board Review 01).

PO Nguyen denied placing his hand firmly around the back of § 87(2)(b) neck, and holding it facing downward and denied placing a hand on § 87(2)(b) neck at any point during the incident (Board Review 04).

Neither PO Beers nor Lt. Diab could recall if they were in the same vehicle as § 87(2)(b) en route to the 71<sup>st</sup> Precinct stationhouse. Neither PO Beers nor Lt. Diab witnessed PO Nguyen place his hand around § 87(2)(b) neck (Board Review 02 and Board Review 03).

§ 87(2)(b), § 87(2)(g)



**Allegation K—Abuse of Authority: At the 71st Precinct stationhouse, Police Officer Vu Nguyen searched § 87(2)(b) cellphone.**

**Allegation L—Abuse of Authority: At the 71st Precinct stationhouse, Police Officer Vu Nguyen damaged § 87(2)(b) property.**

§ 87(2)(b) testified at the CCRB that when he and the officers reached the stationhouse, § 87(2)(b) told the officers that the vehicle he was driving and the items inside the vehicle belonged to his brother. The officers processed § 87(2)(b) arrest, took his items, including his cellular phone, and he was placed in a holding cell overnight. PO Nguyen approached the waiting cell and told § 87(2)(b) that he could call his brother in order to inform him of the situation, but § 87(2)(b) would have to unlock the phone in order to access the phone numbers. § 87(2)(b) unlocked his phone so that PO Nguyen could speak to his brother, but PO Nguyen immediately walked away with the unlocked phone while engaging the screen with his thumb.

Approximately five minutes later, PO Nguyen returned to the waiting cell to speak with § 87(2)(b). PO Nguyen told § 87(2)(b) that he had called § 87(2)(b) § 87(2)(b) and he was coming to the stationhouse to retrieve his vehicle. When § 87(2)(b) was ultimately released hours later, § 87(2)(b) § 87(2)(b) gave his phone to him. § 87(2)(b) discovered that his phone had been reset and all the data had been deleted. § 87(2)(b) thought his phone had been reset so he would be unable to determine what contents PO Nguyen had accessed (Board Review 01).

§ 87(2)(b) § 87(2)(b) stated that he received a call from PO Nguyen from § 87(2)(b) phone on the morning following the incident. PO Nguyen instructed him to come to the 71<sup>st</sup> Precinct stationhouse and retrieve his vehicle and gave him § 87(2)(b) phone (Board Review 07).

PO Nguyen denied having § 87(2)(b) unlock his cellular phone and walking away while engaging the screen. PO Nguyen denied resetting § 87(2)(b) phone and deleting the contents. PO Nguyen denied interacting with § 87(2)(b) at the stationhouse (Board Review 04).

Neither PO Beers nor Lt. Diab witnessed or were aware of PO Nguyen having § 87(2)(b) unlock his cellular phone and walk away while engaging the screen. Neither PO Beers nor Lt. Diab witnessed or were aware of PO Nguyen resetting § 87(2)(b) phone and deleting its contents (Board Review 02 and Board Review 03).

§ 87(2)(b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b) first complaint with the CCRB (Board Review 11).
- PO Beers has been a member of service for nine years. There are eleven prior allegations against PO Beers stemming from six previous cases. None of the previous allegations against PO Beers were substantiated. § 87(2)(g)

- In CCRB case 201206502, a frisk allegation was pleaded against PO Beers. The case was closed as complainant uncooperative.
- In CCRB case 201704036, a vehicle stop allegation and vehicle search allegation were pleaded against PO Beers. The allegations were closed as exonerated.
- Lt. Diab has been a member of service for 11 years. There are 17 prior allegations against Lt. Diab stemming from 10 previous cases. Of the prior allegations, three of the allegations were substantiated.
  - In CCRB case 200800389, a physical force allegation and a discourteous action allegation were substantiated with charges by the Board against Lt. Diab. The NYPD disposition was guilty, and the penalty was loss of 35 vacation days.
  - In CCRB case 201507839, a stop allegation was substantiated against Lt. Diab. The Board recommended Formalized Training and the NYPD disposition was Formalized Training.
- PO Nguyen has been a member of service for seven years. There are two prior complaints against PO Nguyen stemming from two cases. There are no substantiated allegations.
 

§ 87(2)(g)

  - In CCRB case 201600155, a physical force allegation was pleaded against PO Nguyen. The allegation was closed as complainant uncooperative.

#### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation because 

§ 87(2)(b)

 was arrested during the incident.
- On November 27, 2017, the Comptroller's Office confirmed that a Notice of Claim was not filed by or on behalf of 

§ 87(2)(b)

 (Board Review 12).
- § 87(2)(b)

 has no prior criminal convictions (Board Review 13).

Squad No.: \_\_\_\_\_

Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date